IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Smt.Chhota Devi Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.367/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 16-1-2002 in Sessions Case No.93/2001 passed by Sh. Girraj Prasad Gupta, RHJS, Additional Sessions Judge (Fast Track) No.1, Jaipur City.

Date of Judgment: October 18, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. Chimna Ram Punia] for the appellant.
Mr. Kailash Chand Sharma]

Mr. R.P.Kuldeep, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

This is a peculiar case wherein a wife did not level any allegation against her husband but implicated only her mother-in-law for having poured kerosene on her person and set her ablaze. Chhota Devi, appellant herein, who was convicted and sentenced under sections 302 and 498A IPC to suffer imprisonment for life with fine and imprisonment for three years with fine respectively for having committed murder of her daughter-in-law Manju by the learned Additional Sessions Judge (Fast Track) No.1 Jaipur City vide judgment dated January 16, 2002, has preferred the instant appeal.

2. It is the prosecution case that on July 8, 2000 while Manju was

admitted to the SMS Hospital Jaipur her statement was recorded by Chaina Ram, Sub Inspector (Pw.4) at 8.20 PM. In the Parcha Bayan (Ex.P-5) Manju stated that she got married to Mangal Singh one year back and had a small daughter. She resided with her husband, mother-in-law and father-in-law. Although she had cordial relations with her husband, her mother-in-law Chhota Devi used to harass her on the pretext of one reason or the other. Chhota Devi used to beat her husband also. In the evening Chhota Devi poured kerosene on her person and set her ablaze. She then rushed to the Police Station where the police put out the fire and removed her to the Hospital. On the basis of parcha bayan a case under section 498A and 307 IPC was registered and investigation commenced. Statement of Manju got recorded by SDM as well as Judicial Magistrate, site plan was drawn and appellant was arrested. After the death of Manju section 304-B IPC got added. Dead body was subjected to autopsy and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Jaipur City. Charges under sections 498A and 304B in the alternative 302 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 14 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. One witness Mangal Singh (Dw.1) was examined in defence. The learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. With the help of learned counsel we have weighed the material on record. Ram Swaroop (Pw.1) brother of Manju, deposed that when he reached to the Hospital, he found her sister in Burn- Ward. These were 90%

burns on her body. He further stated that prior to one month of the incident Chhota Devi pushed Manju and her husband Mangal Singh out of the house and they started residing in a rented house. In the cross examination Ram Swaroop admitted that he along with two constables had gone inside the ward to meet his sister. He stated thus:-

> "यह सही है कि मुझे मेरी बहिन से बात करने के लिए डाक्टरों ने मना नहीं करी। हम सब साथ ही मिलने गये थे। दो कांस्टेबल, मैं और मेरे पिताजी सब मेरी बहिन के पास अन्दर गए थे।"

4. Bhagirath (Pw.2), father of Manju, remained whole night in the Hospital. He stated as under:-

> "मैं अस्पताल पहूंचा तब मेरी लडकी के ड्रिप लगा रखी थी ... मैं उसके पलंग के पास में ही खडा रहा था ... पूरी रात हम अस्पताल में ही रहे थे।"

5. Jagdish Ram (Pw.3) who was posted as Head Constable in the police station Jawahar Nagar deposed that on July 8, 2000 around 7.35 PM a woman in burning condition came rushing to the police station. He and other police persons covered her with wet cloth and put out the fire. Her name was Manju. She told that her mother-in-law Chhhota Devi had poured kerosene on her and set her ablaze. She was then taken to the Hospital. Chena Ram IO (Pw.4) in his deposition stated that after Manju came to the police station they put out the fire and removed her to the hospital, where he recorded her statement. Dr.Bal Mukand (Pw.6), who was a member of Medical Board, deposed that he put his signatures on the post mortem report (Ex.P-6) according to which cause of death of Manju was Septicemic shock on account of 85 to 90% burn. Sohel Raja, SHO, (Pw.10) drew site plan (Ex.P-11), according to which kerosene was poured on Manju in a room of the first floor shown by mark `A'. Thereafter Manju came down and she was burnt at

place `B', which was out side the ground floor of the house. Manju then rushed to place `C', which was in front of police station Jawahar Nagar, where the police saw Manju in burnt condition. Sh. Ajay Prasad Jain (Pw.12), Additional Civil Judge Jaipur (East) on July 8, 2000, recorded statement of Manju (Ex.P-14) under section 164 CrPC. Ms.Manisha Arora (Pw.13), Sub Divisional Magistrate (South) Jaipur, recorded dying declaration of Manju (Ex.P-16) on July 8, 2000. In her statements Manju stated that the appellant poured kerosene on her and set her ablaze.

6. In the statement under section 313 CrPC the appellant stated that her son Mangal Singh and Manju lived separately. Since Manju wanted to sell the house and she declined, Manju became irritated. She herself poured kerosene and got herself burnt. Manju had gone to police station in a burnt condition in order to implicate the appellant falsely. Mangal Singh (Dw.1), husband of Manju, deposed that Manju herself poured kerosene on her body, got herself burnt and went to the police station.

7. Factual situation that emerges from the material on record may be summarised thus:-

(i) Appellant and deceased lived separately on the date of incident.

(ii) The two dying declarations of Manju got recorded by the Magistrate after Ram Swaroop and Bhagirath met her in the hospital.

(iii)Mangal Singh (Dw.1) husband of deceased deposed that since Manju wanted to sell the house and his mother declined, Manju herself poured kerosene, got herself burnt and went to

the police station.

(iv) From the evidence of Ram Swaroop (Pw.1) and Bhagirath (Pw.2) it is evident that they remained with Manju throughout.

(v) A look at the site plan demonstrates that kerosene was poured on Manju in the room situated at first floor, whereas she was burnt out side the house in the ground floor.

8. We see no reason to disbelieve the testimony of Mangal Singh (Dw.1) and we hold that Manju herself poured kerosene and got herself burnt. In the facts and circumstances of the case this possibility cannot be ruled out that prior to recording of dying declarations of Manju she was prompted by her brother Ram Swaroop to implicate the appellant. On the facts established however it is proved that the willful conduct of appellant in harassing Manju was so cruel that she was driven to commit suicide and the offence of abetment of committing suicide, punishable under section 306 IPC is proved against appellant. We are also of the view that charge under section 498A IPC is proved against the appellant beyond reasonable doubt.

9. Although charge under section 306 IPC was not framed against appellant but omission to frame charge under section 306 IPC has not resulted in any failure of justice. In Hira Lal Vs. State (Govt.of NCT) Delhi (2003)8 SCC 80, their Lordships of Supreme Court in a similar situation observed as under:-

> "Though no charge was framed under section 306 IPC, that is inconsequential. On the facts of the case, even though it is difficult to sustain the conviction under section 304-B IPC, there is sufficient material to convict the accused-appellants in terms of Section 306 IPC along with Section 498A IPC"

10. For these reasons, we dispose of instant appeal in the following terms:-

(i) We partly allow the appeal of appellant Chhota Devi and instead of section 302 we convict her under section 306 IPC and sentence her to suffer rigorous imprisonment for 10 years and fine of Rs.1000/- in default to further suffer six months rigorous imprisonment. We however confirm her conviction and sentence under section 498A IPC. Both the sentences shall run concurrently.

(ii) The impugned judgment of learned trial court stands modified as indicated above.

(Chatra Ram Jat),J. (Shiv Kumar Sharma)J.

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